



Kutak Rock LLP
Two Logan Square, 100 North 18th Street, Suite 1920, Philadelphia, PA 19103-2707
office 215.299.4384

Oliver D. Griffin
215.717.8487
oliver.griffin@kutakrock.com

February 28, 2023

VIA ECF FILING ONLY

The Honorable Indira Talwani
United States District Court Judge
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, Massachusetts 02210

Re: *AnywhereCommerce, Inc., et al v. Ingenico, Inc., et al.*, No: 1:19-cv-11457-IT

Dear Judge Talwani:

Plaintiffs want to take this opportunity to correct and clarify a statement made during argument on the pending dispositive motions that was held on February 9, 2023.¹

During that hearing, the parties discussed Defendants' Exhibit 1 to their Reply Memorandum in Further Support of Their Motion For Summary Judgment ("Reply"), Doc. No. 204-1 at 2-3.²

Defendants only first raised this exhibit (or any evidence) in support of their statute of limitation arguments in the Reply.³ Regardless, I stated during the hearing that the first time Plaintiffs saw the As-Filed Exhibit 1 was in the Reply without the benefit of discovery.⁴

What I should have stated to the Court is that this was the first time we saw this *version* of the document. An electronic version was used by my colleague, Mr. Kessler, during the deposition of

¹ On February 22, 2023, we received a letter from Mr. Techentin, wherein he identified a handful of my statements on the record (appearing at pages 108:25 – 109:1-12 of the transcript) that he believed required correction. In fact, Mr. Techentin noted in his letter that if we did not correct the record, then he was going to bring the issue to the Court's attention today.

² A copy of Defendants' as-filed Exhibit 1, which was offered by Defendants as purporting to present accurate or verified ROAM / Ingenico accused product sales revenue for 2013, is attached as Exhibit A.

³ See Defendants' Memorandum of Law, Doc. No. 192 at 15-16 (appearing at Section II) and Defendants' Statement of Undisputed Facts, Doc. No. 193 (neither of which contain any reference to Exhibit 1 or any other competent evidentiary support that BBPOS's claims are purportedly time-barred).

⁴ See Tr. at 108:25 – 109:1-6. The relevant corrections are reflected in strike-out: "The second thing which is the so-called sales record in Exhibit 1 to the reply. ~~The first time we see it is in the reply~~, no Bates stamp, and it talks about 380 devices being sold in 2013 -- not in June, July, August, September, October, November. We don't know when in 2013. ~~We didn't take discovery on it. It wasn't produced.~~"

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Defendants' Rule 30(b)(6) corporate designee, Victor Young at V. Young Dep. Exhibit 10. The produced, Bates-Stamped version [IngenicoInc_0269935] also appears visually different – certain non-substantive hidden lines are shown in the PDF spreadsheet generated from our e-discovery platform. *See* IngenicoInc_0269933-35, which is a copy of the PDF, with material contextual internal email correspondence included, and attached as Exhibit B.

Further, the document is not an Ingenico-created financial analysis, but is rather from non-party Landi, which document was prepared at the request of Ingenico Mobile Solutions (or “IMS”) to explain an anticipated “mismatch between figures reporting from Landi & IMS” from 2014 through the then present. *See* Ex. B at 1.

Although it is believed that the foregoing corrections and clarifications to the record do not have a material impact on any rulings to be made by the Court, Plaintiffs nonetheless appreciate the Court's consideration thereof.

Plaintiffs stand ready to address these issues during the Court's hearing tomorrow.

Respectfully submitted,

/s/ Oliver D. Griffin

Oliver D. Griffin

ODG

cc: Jeffrey Techentin, Esq.
Melissa Bozeman, Esq.
Gail A. MacDonald Marchione, Deputy Clerk

EXHIBIT A

EXHIBIT 1

	(in K USD)			(in K USD)			Group Exchange Rate CNY/EUR	Average exchange rate Ytd (statutory) EUR/USD	Remaks
	Revenue	COGS	Gross Margin	Revenue	COGS	Gross Margin			
2013	Qty								
RP350x	380						8.1655	1.3282	6.14779
NRE (Others)	32								
Total	412								
2014	Qty								
RP350x	3,900						8.1883	1.3288	6.16218
RP75X	18,225								
NRE (Others)	-								
Total	22,125								
2015	Qty								
RP457c	150						6.973	1.1096	6.28425
RP350x	127,975								
RP75X	24,372								
NRE (Others)	2,055								
Total	154,552								
2016	Qty								
Moby/3000	400						7.3496	1.1066	6.6416
RP457c	68,444								
RP350x	130,881								
RP75X	18,551								
NRE (Others)	428								
Total	218,704								
2017	Qty								
Moby/3000	182,515						7.6264	1.1293	6.75321
RP457c	101,745								
RP350x	80,770								
RP75X	69,632								
Moby/8500	290								
NRE (Others)	-								
Total	434,952								
2018 (October YTD)	Qty								
Moby/3000	121,221						7.796	1.1903	6.54961
RP457c	100,030								
RP350x	17,040								
RP75X	12,894								
Moby/8500	1,860								
NRE (Others)	10								
Total	253,055								

2013-2018.10 YTD								
	Qty	Revenue	COGS	Gross Margin	GM (%)			
Moby/3000	304,136							
RP457c	270,369							
RP350x	360,946							
RP75X	143,674							
Moby/8500	2,150							
NRE (Others)	2,525							
Total	1,083,800							

EXHIBIT B

From: 钱芳(Fang Qian) <qianf@landicorp.com>
To: Christopher ROTSART
Sent: 12/7/2018 9:38:45 AM
Subject: 答复: Financial figures
Attachments: EUS2001 financial analysis 2013-2018(20181207).xlsx

Hello Christopher,

Sorry for the late reply. Based on your requirement we prepared the attached file including all info from 2013--2018 that we submitted in Group system.

For the OPEX, as we don't have the dedicated calculation for ROAM because LANDI OPEX is for all projects, it's not accuracy to just allocate some expense here, so the file doesn't contains the OPEX figures. Just FYI that the margin% you can see in the details, is applied by finance manner with inventory moving weighted average cost and all indirect cost is not included. And there's no data for Cradles as we considered it as an accessory, for all other RP series & Moby series are well listed in the file.

Hope it's enough for you to do the consolidation.

Best Regards
 Qian Fang

发件人: Christopher ROTSART <Christopher.ROTSART@ingenico.com>
 发送时间: 2018年11月29日 23:56
 收件人: 钱芳(Fang Qian) <qianf@landicorp.com>
 主题: Financial figures

Hi Qian Fang,

With the new CEO & the re-assessment of the B&A business, I expect that there will be questions going through IMS & through Landi on the financial figures for the IMS product line.

Financial information are getting complex because Landi sell to IMS who, for international, resell to Regions. I don't always have the price that Regions sell to final customers & their local cost (but so far, majority of volumes are US or Apple). I want to be able to show the gross margin, not only for IMS but consolidated with Landi (and Regions when I can).

Also, because some volumes are going through our inventory, for some products we inject the key (and charge customer for it), some being bundled with our tablets (we sell to our customer a Moby/M70 from Malata with a RP457c from Landi), there will likely be a mismatch between figures reporting from Landi & IMS. That is expected but to be in position to answer questions which will certainly pop up to explain the mismatch, could you please share the reporting figures that you are considering on our business line : 2014 (if you have, it wasn't anyway very significant), 2015, 2016, 2017, 2018 (we know what are the figures for end of year now...)

Per product = full year quantity, revenue, COGS. (in an excel file for easy reuse)

Moby/3000
 RP457c (not necessary to split BT, AJ, FDC)
 RP350x
 RP75X (not necessary to split RP755x & RP757c)
 Moby/8500
 Cradles (not necessary to split AJ, BT)

For NRE (customization, keys), just a single total revenue for each year (if you have also your total COGS for these that is better otherwise just an estimate)

Additional question, based on the revenue/COGS, the contractual margin is based on the markup (20-28%),

we are able to calculate it based on all PO in the system (I expect it will be around 23-25% based on the mix of PO volume/products). I would like to add a simple line (no need any breakdown) for each year to have the Landi/ING Beijing OPEX which will basically cover the cost of the resources on supply chain, the external costs (custom, DGM...) & cost that you support from operations not always recharged to IMS) assigned to the IMS business... That will give a better picture on actual Gross Margin for Landi. I made an exemple of what I would like in the attached file but you may use your own template & reuse whatever you may already have...

Basically, I want to show, as of today, a consolidated Business Plan (IMS & IMS + Landi) and demonstrate that our product line has been significantly above the Group EBITDA... So that we get stronger support to continue expanding...

Thanks,

Christopher

VP of HW Product Management & Supply chain

Ingenico Mobile Solutions

101 Federal St #700, Boston, MA 02110

(T) +1 678 456 1866 / (M) +1 857 350 7418

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Produced in Native Form

		(in K USD)	(in K USD)	(in K USD)			Group Exchange Rate CNY/EUR	Average exchange rate Ytd (statutory) EUR/USD	
2013	Qty	Revenue	COGS	Gross Margin	GM (%)	Remaks	8.1655	1.3282	6.147794
Moby/3000	-	- \$US	- \$US	- \$US	#DIV/0!				
RP457c	-	- \$US	- \$US	- \$US	#DIV/0!				
RP350x	380	13 \$US	(10) \$US	3 \$US	24.3%				
RP75X	-	- \$US	- \$US	- \$US	#DIV/0!				
Moby/8500	-	- \$US	- \$US	- \$US	#DIV/0!				
Cradles	-	- \$US	- \$US	- \$US	#DIV/0!				
NRE (Others)	32	5 \$US	(2) \$US	3 \$US	63.9%				
Total	412	18 \$US	(12) \$US	6 \$US	34.6%				
2014	Qty	Revenue	COGS	Gross Margin	GM (%)		8.1883	1.3288	6.162176
Moby/3000	-	- \$US	- \$US	- \$US	#DIV/0!				
RP457c	-	- \$US	- \$US	- \$US	#DIV/0!				
RP350x	3,900	87 \$US	(62) \$US	25 \$US	28.7%				
RP75X	18,225	649 \$US	(464) \$US	184 \$US	28.4%				
Moby/8500	-	- \$US	- \$US	- \$US	#DIV/0!				
Cradles	-	- \$US	- \$US	- \$US	#DIV/0!				
NRE (Others)	-	29 \$US	- \$US	29 \$US	100.0%				
Total	22,125	764 \$US	(526) \$US	238 \$US	31.2%				
2015	Qty	Revenue	COGS	Gross Margin	GM (%)		6.973	1.1096	6.284247
Moby/3000	-	- \$US	- \$US	- \$US	#DIV/0!				
RP457c	150	9 \$US	(7) \$US	2 \$US	25.5%				
RP350x	127,975	2,684 \$US	(1,874) \$US	810 \$US	30.2%				
RP75X	24,372	953 \$US	(679) \$US	274 \$US	28.7%				
Moby/8500	-	- \$US	- \$US	- \$US	#DIV/0!				
Cradles	-	- \$US	- \$US	- \$US	#DIV/0!				
NRE (Others)	2,055	78 \$US	(33) \$US	46 \$US	58.3%				
Total	154,552	3,724 \$US	(2,593) \$US	1,131 \$US	30.4%				
2016	Qty	Revenue	COGS	Gross Margin	GM (%)		7.3496	1.1066	6.641605
Moby/3000	400	5 \$US	(4) \$US	1 \$US	29.0%				
RP457c	68,444	2,082 \$US	(1,546) \$US	536 \$US	25.8%				
RP350x	130,881	2,431 \$US	(1,764) \$US	667 \$US	27.4%				
RP75X	18,551	779 \$US	(556) \$US	223 \$US	28.6%				
Moby/8500	-	- \$US	- \$US	- \$US	#DIV/0!				
Cradles	-	- \$US	- \$US	- \$US	#DIV/0!				
NRE (Others)	428	85 \$US	(66) \$US	19 \$US	22.1%				
Total	218,704	5,381 \$US	(3,935) \$US	1,446 \$US	26.9%				
2017	Qty	Revenue	COGS	Gross Margin	GM (%)		7.6264	1.1293	6.75321
Moby/3000	182,515	1,704 \$US	(1,330) \$US	374 \$US	22.0%				
RP457c	101,745	2,716 \$US	(1,887) \$US	830 \$US	30.5%				
RP350x	80,770	1,368 \$US	(980) \$US	388 \$US	28.4%				
RP75X	69,632	2,542 \$US	(2,093) \$US	449 \$US	17.7%				

Moby/8500	290	11 \$US	(9) \$US	2 \$US	19.4%
Cradles				- \$US	#DIV/0!
NRE (Others)	-	176 \$US	(178) \$US	(2) \$US	-0.9%
Total	434,952	8,517 \$US	(6,475) \$US	2,042 \$US	24.0%

2018 (October YTD)

	Qty	Revenue	COGS	Gross Margin	GM (%)			
Moby/3000	121,221	1,201 \$US	(933) \$US	268 \$US	22.3%			
RP457c	100,030	2,687 \$US	(1,862) \$US	824 \$US	30.7%			
RP350x	17,040	280 \$US	(201) \$US	79 \$US	28.2%			
RP75X	12,894	469 \$US	(341) \$US	128 \$US	27.2%			
Moby/8500	1,860	68 \$US	(47) \$US	21 \$US	31.3%			
Cradles				- \$US	#DIV/0!			
NRE (Others)	10	331 \$US	(174) \$US	157 \$US	47.5%			
Total	253,055	5,036 \$US	(3,558) \$US	1,478 \$US	29.3%	7.796	1.1903	6.549609

2013-2018.10 YTD

	Qty	Revenue	COGS	Gross Margin	GM (%)
Moby/3000	304,136	2,910 \$US	(2,266) \$US	644 \$US	22.1%
RP457c	270,369	7,494 \$US	(5,302) \$US	2,193 \$US	29.3%
RP350x	360,946	6,862 \$US	(4,890) \$US	1,972 \$US	28.7%
RP75X	143,674	5,392 \$US	(4,134) \$US	1,258 \$US	23.3%
Moby/8500	2,150	79 \$US	(56) \$US	23 \$US	29.7%
NRE (Others)	2,525	704 \$US	(452) \$US	252 \$US	35.8%
Total	1,083,800	23,441 \$US	(17,100) \$US	6,341 \$US	27.1%